Spheres of Influence

Can You Still Drink the Water?

What began as a straightforward (and long overdue) move to reauthorize the Safe Drinking Water Act has become an intriguing political drama that may be much more complex considering the possible risks, potential costs, and intended benefits to consumers and taxpayers.

The process began on 8 September 1993, when EPA Administrator Carol Browner, on behalf of the Clinton administration, set forth 10 recommendations for the reauthorization legislation, backing them up with a 127-page report, "Technical and Economic Capacity of States and Public Water Systems to Implement Drinking Water Regulations." Environmentalists have had some reservations, but they largely support the recommendations.

Since 1991, when the five-year life span of the 1986 amendments to the Safe Drinking Water Act (SDWA) expired, the unchanged laws have been carried on from year to year under continuing resolutions (the mechanism whereby laws stay in place after their expiration if Congress can't agree to renew them officially, or hasn't time to). EPA has continued to carry out the provisions "as best we can," says a spokesperson. According to the spokesperson, many water systems are "found to be in noncompliance," meaning that 80% of the time, they have not been tested or the results have not been reported as required. But the lack of information should not be presumed to mean no dangerous contaminants are present.

A Household Word

The SDWA probably affects more Americans directly every day than any other piece of legislation. While the Clean Water Act covers what goes into the water—discharges from industry and waste treatment plants, runoff from farms, dredged material, and so forth—the SDWA regulates the water that comes out of the kitchen tap, whose quality depends on freedom from microbial agents, dissolved minerals like lead and other metals, poisonous organic compounds, and other potentially harmful substances. The more than 200,000 public water systems within the purview of the SDWA serve 243 million people. A few urban systems are huge, but 61% serve between 25 and 500 customers in rural areas, mobile home parks, or housing subdivisions.

There's virtually no limit to what modern technology can remove from drinking water, provided someone is willing to pay for 1 or more of the 22 technologies that EPA has listed as the "best available technology" for at least one contaminant. These include tried-and-true procedures like filtration, aeration, and chlorination, as well as more exotic methods like reverse osmosis through special membranes and filters with activated carbon that bonds with specific contaminants. The main provision of the SDWA was that EPA should set allowable levels of 83 specific contaminants and pollutants in drinking water.

Before 1986, treatment requirements were skimpy; to go into a small-scale water business, investors needed only a well, a pump, a tank, and perhaps a chlorinator. The most significant cost was laying pipe for distribution. Operation and maintenance costs were minimal. As a result, thousands of small, privately-owned systems sprang up and continue to proliferate, especially in suburban areas. Eighty percent of these smaller systems rely primarily on groundwater, which may be contaminated by substances seeping in from unidentifiable sources miles away.

Historically, small water systems had to meet only simple standards for clarity and levels of bacteria and nitrate, but the 1986 amendments to the SDWA brought them under the authority of the EPA and its requirements for testing for a large, growing list of pollutants and contaminants. Since then, the thousands of small suppliers have argued that they shouldn't be held to the same standards as big cities that can afford the best technology or far-reaching reservoir systems. Public health authorities and environmental groups respond that toxic, carcinogenic, or microbial contaminants are hazardous to everyone, dwellers of subdivisions and skyscrapers alike.

The Debate

Everyone agrees that the SDWA should be reauthorized in this session of Congress. The coming debate centers on the standards-setting process, which, in turn, revolves around the familiar dilemma of risk versus benefit versus cost. There's also a background of public resentment against unfunded federal mandates—state and local programs that the federal government requires but does not pay for. Many of EPA's activities come under this rubric. In the belt-tightening climate of the 1990s, however, most participants in the SDWA debate are aware of financial realities and are genuinely concerned about how the programs they advocate could be paid for.

"When standards are set, they should consider the benefit in reduction in public health risk, and what it would cost, as well as what technology is available," says Shaun McGrath, the member of Congressman Jim Slattery's (D-Kansas) staff who's handling one of the proposed bills. If the material is dangerous, the less of it the better. But does it make sense to go from a $50,000 technology to one costing $2 million if the public health benefit is negligible? Some systems could afford it, but under current law, every system, even the smallest and poorest, has to conform."

Throughout 1993, fiscal concerns permeated most issues debated in Congress, such as deficit reduction, the crime bill, NAFTA, and the President's proposals for health care reform. Health care reform in particular occupied the attention of lawmakers like Congressman Henry Waxman (D-California), chair of the House Committee on Energy and Commerce, who would otherwise have been more actively involved early on in the reauthorization of the SDWA.

Waxman and like-minded members of Congress are said to favor the administration's proposal to have the EPA and states (which have already set standards for 83 pollutants and are working on standards for another 30) divide contaminants into two classes—those that should definitely be regulated and those that should be studied further.

In practice, unless water system officials can prove (with documentation such as pesticide sales records) that a particular pollutant was not used in their watershed, each system will have to test water quarterly to gather baseline data on potential pollutants. If a pollutant is undetected for a year, the tests do not have to be repeated until three years later. Officials of small water systems say that, at $700–$1000 each, the tests are too expensive, and if EPA requires them to install the best available technology, many systems may be forced out of business.

"The changes we are proposing will help water systems of all sizes provide safe, reliable drinking water to their users," Browner said. "This administration wants a more flexible Safe Drinking Water Act that eliminates unnecessary burdens on small communities, while protecting public health." The proposals include a $599 million appropriation to set up revolving loan funds within each state to provide

low-cost loans to water systems that couldn't otherwise afford to meet EPA standards.

A week after Browner announced the administration's position on SDWA, Democratic Senator Max Baucus, whose own state of Montana was unable to fund all the SDWA requirements until it instituted water user fees in 1990, introduced a reauthorization bill (S-1547). Environmentalists liked the enforcement improvement provisions Baucus proposed, but they opposed the bill because it would impose a moratorium of 15 more years on standards for small water systems. Later in the month, EPA testified that this bill needed to be strengthened.

The spotlight moved to the House of Representatives on October 27, when Congressmen Slattery and Thomas Bliley (R-Virginia) introduced their own bill, HR 3392, which goes against the administration's standard-setting recommendations.

In the view of Slattery and Bliley, EPA's policy is driven by standards only big water systems can afford to meet. The bill's supporters condemn it as a "one size fits all" approach, asserting that a town like Hays, Kansas, with a population of just under 18,000, shouldn't have to purchase water purification equipment to match that of a city like Los Angeles. Slattery and Bliley represent rural areas where small water systems predominate.

Pressing strongly for the Slattery bill is a broad, powerful coalition led by the 110-year-old American Water Works Association, with 55,000 individual and 5000 corporate members. It includes the National Governors' Association, the National Rural Water Association, the National League of Cities, the National Conference of State Legislatures, the National Association of Regulatory Utility Commissioners, civil engineers, scientists, and others with a professional interest in drinking water. The coalition's spokesman John Sullivan says, "We support Slattery right down the line. Our broad-based coalition reached some compromises and funneled our input into the Slattery bill. We'd be perfectly happy if, by some miracle, it were passed as is, but there'll probably be additional compromises because that's how laws are made." The coalition's strategy, says Sullivan, was carefully orchestrated. "For the moment the House is taking the lead because we had willing candidates there. We wanted to get the debate going in the House. Chairman Waxman is probably in opposition to changes in the standard-setting process, but there are some aspects of the Slattery bill I'm sure he would support."

The basic structure of the SDWA is sound, Sullivan says, but it needs adjustments. "We advocate pollution prevention and watershed protection, which in some cases gets you into a regional approach. If you were living in total isolation, where the environment was completely your own, you could make whatever choices you want. But how clean we want our environment and how much we're willing to pay to get it are public choices, which shouldn't be made by extreme environmental groups, who sometimes seem to have an elitist notion that they can make better decisions than the public," he said.

"This is a very practical and realistic bill," says McGrath. "Doctrinaire environmentalists are convinced any contaminants are too much. We believe the zero goal is a good thing, but the world isn't perfect, and we just can't afford to do it all right now. We're not as much at cross purposes as the rhetoric would suggest."

Not so, say 11 prominent environmental groups, whose spirited response to the Slattery-Bliley bill has unnerved some of its supporters. The Natural Resources Defense Council, Friends of the Earth, the Environmental Working Group (formerly the Center for Resource Economics), the Alliance to End Childhood Lead Poisoning, the National Education Association, the National Parent-Teacher Association, Citizen Action, Greenpeace, the National Audubon Society, the Sierra Club, and the U.S. Public Interest Research Group all expressed their displeasure in strong letters to Congressman Slattery. The nonpartisan political arm of the environmentalists, the League of Conservation Voters, went a step further, informing every member of the House that when their political advisory committee makes up its scorecards for Congressmen, they'll count co-sponsorship of HR 3392 as a "negative action." (When Congress departed Washington, the bill had 22 co-sponsors.)

The National Education Association and National Parent-Teacher Association said the bill would "weaken current legal protection for all Americans, and especially for America's children, from drinking water that is contaminated with lead and other pollutants." The Friends of the Earth wrote, "We believe . . . the bill rolls back critical public health protections and assures that tap water regulators will elevate cost considerations over safety . . . and sets up a situation in which health goals themselves are likely to be severely compromised."

A. Blakeman Early, Washington representative of the Sierra Club, says that while environmentalists don't want to compromise on water quality, they understand the problems of paying for it. "The environmental community is grappling with the question of how to finance these programs, and maybe we're coming a bit late to the discussion. We think if we focus on new ways of financing programs we can at least moderate some of the anti-environmental flavor of the campaign against nonfunded federal mandates, which are targets of the program."

Responding to the accusation that the goals of his organization and others are too absolute, Early said, "Different people have different levels of concern about contaminants in the water, but we're reflecting the thinking of the American public. They aren't happy with the current status of their drinking water supply. If you want proof, look at the tremendous increase in the sales of bottled water. People are voting for purer water with their wallets."

Before introducing his bill, Slattery met with Waxman, according to McGrath, who said, "Mr. Waxman made it clear that [the reauthorization of SDWA] is a high priority for him, an initiative he feels strongly needs to be authorized. He did say he's opposed to changing the standard setting and that he'd work against Mr. Slattery, if that was something we intended to push." But, McGrath emphasized, "Congressman Slattery has every intention of working with Mr. Waxman." Waxman has not commented publicly on the Slattery bill.

"Our bill tries to allow some flexibility in the process for setting a standard," says McGrath. "Under current law, the EPA administrator establishes maximum contaminant level goals [MCLG] as close as possible to zero. The maximum contaminant level is set as close to the theoretical MCLG as possible, considering cost and the availability of technology." The Slattery bill provides that if a system can prove to the state that it can't afford the best available purification technology and no alternatives (such as buying purer water from another system) are open, they could use "the best available affordable technology" (BAAT) as an interim solution. The water wouldn't meet the national standard, but would presumably come close. There would be more risk to public health than with a state-of-the-art technology, but supporters say the risk would be reasonable. And because most systems using BAAT would be small, relatively few people would be affected by the elevated risk.

But in its report to Congress, EPA raised the possibility of a compromise that somewhat resembles Slattery's best available affordable technology. Instead of insisting on the best available technology (BAT) to address each contaminant present in the water, the agency would consider allowing hard-pressed small systems to opt for a simple but comprehensive set-up that would be almost as effective—

dubbed by someone at EPA as "super BAT." Each system would work with the state to determine the appropriate EPA-approved super-BAT for its problems.

"Although our general approach would be that the states would carry out the program, we think that, if standards are to be relaxed, EPA should keep its hands on the controls in order to protect public health," says Jim Elder, EPA's director of groundwater and drinking water. "The Slattery-Bliley bill basically leaves the decisions up to the states, with only the vaguest guidance from EPA. The whole concept needs more research before it'll be ready for prime time."

EPA and the Clinton administration also want to save money by emphasizing pollution prevention, by identifying sources of contamination, and by establishing drinking water protection zones. EPA follows a similar approach with the Clean Water Act by encouraging industry to amend processes so they won't create substances that would have to be removed from their waste before it is discharged. As incentives to preventing pollution, EPA would reward communities with less expensive monitoring requirements for participating in pollution prevention and other water protection programs.

The administration is expected to introduce a bill of its own early in the 1994 session. "We thought ninety percent of the things they proposed would be improvements in the law," says Erik Olson, senior attorney with the Natural Resources Defense Council, but he has reservations about "vagueness" regarding regulating small systems. NRDC favors the state revolving-loan fund plan in the administration package; however, they don't like the Slattery bill. "The water utility industry wrote the bill," says Olson.

Olson has harsh words for those who would relax environmental regulations covering small water systems. "If the minimum requirements for small systems aren't brought up to as high a level as possible, it means one of two things," he says. "Either people who live on farms or in trailer parks or migrant worker camps aren't worth protecting from pollutants, contaminants, and waterborne illnesses, or, if minimal treatment is good enough for a small rural system, it ought to be good enough for everybody, and the whole country, even major cities with state-of-the-art water systems, might as well revert to the lowest common denominator. We believe all our people are entitled to the cleanest, purest water possible, and America shouldn't be satisfied with anything less."

Free-flowing Borders

The Clean Water Act paved the way for the SDWA and embodied the recognition that water seeps, percolates, cascades, and flows without regard for state boundaries, and is thus a national resource. "No one state can solve its own water problems because water comes from everywhere and goes everywhere," says Peter E. Black, professor of water and related land resources at the State University of New York at Syracuse. "Water policy should be shaped by Congress, but we rely on the states to shoulder some responsibility, such as enforcing federal regulations."

The present drama originated in 1986, when EPA seemed to a frustrated Congress to be dragging its feet in setting standards for water contaminants. Urged on by a worried public, Congress extended the law to cover public wellheads, which refers generically to any place where a public water supply intake is located. This could mean an entire watershed, comprising vast territory.

Under this definition, the state of Georgia, for one, is establishing rules and regulations of land uses to control nonpoint sources of pollution. Unlike point sources, such as waste pipes from factories, nonpoint sources may comprise hundreds of square miles of chemically treated farmland, for example. Nonpoint sources of pollution can't be controlled by modified industrial methods, installing better purification technology, or imposing fines on individual offenders.

The solution inevitably involves the way watershed lands are used. Farmers, for example, may have to be prohibited from raising free-ranging livestock where the groundwater feeds a public wellhead. Black applauds actions like Georgia's, saying, "nonpoint source pollution control is watershed management." The policy has plenty of detractors, however. They see land-use restrictions as an infringement on citizens' rights to benefit from their own property. Some consider this a Constitutional issue and are prepared to argue it through the courts.

Before 1986, the SDWA stipulated maximum levels of biochemical oxidants in rivers. Industries were able to wriggle out of this restriction by claiming that, however noxious the effluent from their discharge pipes, it was swiftly diluted by the receiving water. The 1986 act closed this loophole, and industries that had sluiced their waste into local sewage systems must now pretreat waste before it leaves the plant.

Nowadays, large industries are by and large cooperating with EPA, but small water suppliers in congressional districts like those of Slattery in Kansas have been complaining, says McGrath. "The one-size-fits-all approach asks every system, whether it draws on surface water, groundwater, shallow, deep well, or aquifers, to monitor for the same 83 contaminants. Clearly, every system has its own assortment of problems. The Slattery bill recognizes that some contaminants are more prevalent in some places than others, so systems can target their limited resources on actual threats to their drinking water."

A Drop in the Bucket

At the opening of the 1994 session of Congress, it was clear the SDWA would be modified. The administration's 10 proposals would change current EPA practices slightly and would begin a state revolving loan plan, like the one that's succeeded so brilliantly under the Clean Water Act. An initial $599 million this year would be increased by an annual $1 billion for the next five years. This would enable water systems to improve their technology without having to pay exorbitant interest on loans.

Officials at EPA approve of the lending scheme; EPA has, in fact, been making substantial grants for the same purposes—$7.5 million in 1976, and a whopping $58.9 million in 1993. In 1993, the states needed $304 million to implement federal requirements, but state and federal sources together could provide only $142 million.

The water coalition, on the other hand, gives top priority to flexibility in standard-setting criteria. As written, the Slattery bill reflects that aim, but the congressman's staff is emphasizing that it's negotiable. If the views of Waxman prevail, his subcommittee will come up with a bill more in line with the recommendations of the Clinton administration. Hearings are set to be held on the Senate bill early in 1994. In the meantime, EPA, states, environmentalists, water company representatives, and the congressional staff of Waxman, Slattery, Dingell, and Bliley, have agreed to a meeting on the reauthorization, according to a January 28 article in *Inside EPA*. The so-called "water summit" is an attempt to build consensus among lawmakers and break the deadlock which has erupted over the divisive issue.

Whatever final version of the reauthorization is adopted, responsibilities for enforcing the SDWA remain shared among the Army Corps of Engineers, EPA, the Fish and Wildlife Service (responsible for many bodies of water), and the Soil Conservation Service (concerned with wetlands and with agricultural runoff). To put it mildly, their aims don't always coincide. The aim of the SDWA must be to ensure that the interests of the American people in clean and safe drinking water prevail.

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